

EXHIBIT 6

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 METRO FUEL, LLC,

5 Plaintiff,

Case No.
07-CV-8244

6 - against -

7 CITY OF NEW YORK,

8 Defendant.

9 -----x

10 May 15, 2008
11 10:22 a.m.

12 75 Rockefeller Plaza
13 New York, New York 10019

14 DEPOSITION of EDWARD FORTIER, testifying
15 on behalf of THE CITY OF NEW YORK, the Defendant
16 in the above entitled matter, taken pursuant to
17 Consent, before a Notary Public of the State of
18 New York.

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25 RAYVID REPORTING SERVICE, INC. (212) 599-3642

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2 saying that there is a common sense sentiment
3 shared by City officials that advertising signs,
4 obviously, have an aesthetic impact on the
5 landscape and that there hasn't been any
6 assessment of that impact, other than the common
7 sense conclusion?

8 A I believe the aesthetic goes to the
9 quantity of signage in that, again, accessory
10 signage serves a better public purpose in
11 directing people to businesses and the aesthetics
12 are not related to the particular sign, but rather
13 the quantity of signage that might result.

14 So, keeping the signage -- reducing
15 the amount of signage is beneficial to the
16 aesthetic.

17 Q I hear you and I think I understand
18 what you're saying.

19 I'm just trying to focus more on the
20 City's process for evaluating the pros and cons of
21 signage rather than it's justification for
22 treating different kinds of signage differently.

23 Let me ask you, to your knowledge,
24 has the City ever engaged in any kind of study of
25 the impact of advertising signs on aesthetic?

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2 A Not to my knowledge.

3 Q To your knowledge, has the City ever
4 engaged in any kind of study with respect to the
5 impact of any urban element on aesthetic?

6 MS. NEUFELD: Objection.

7 A No.

8 Q Mr. Fortier, I want to ask you a few
9 questions about traffic safety. I appreciate that
10 at your prior deposition you testified that you're
11 not a traffic safety expert and that you're
12 generally uncomfortable speaking about traffic
13 safety issues, and I certainly don't want you to
14 go beyond your personal knowledge in answering my
15 questions; but I want to press you just a little
16 bit further to see if you do have an opinion in
17 the area of traffic safety that might be relevant
18 to this case.

19 I would preface my questions by
20 observing once again that I believe you've
21 testified that you have some general understanding
22 about the City's traffic safety concerns that
23 animate its advertising sign restrictions?

24 A Very -- on a very limited basis,
25 yes.

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2 them to street furniture?

3 A Yes.

4 Q My question is, do you believe it
5 was prudent for the City to do what it did in
6 Section 4.4.2; namely, to apply all of the Zoning
7 Resolution's restrictions on electronic media to
8 Cemusa's street furniture signs without accounting
9 for any of the differences to which you testified
10 before?

11 MS. NEUFELD: Objection.

12 A Yes.

13 Q The restrictions on electronic media
14 and flashing signs contained in the Zoning
15 Resolution are equally applicable to street
16 furniture as they are to advertising signs on
17 zoning lots, right?

18 A Correct.

19 Q You'll see in 4.4.2, for whatever
20 reason the City chose not to impose the Zoning
21 Resolution's restrictions on backlighting, to
22 street furniture.

23 Can you think of any reason why it
24 would be appropriate for the City to impose the
25 Zoning Resolution's restrictions on electronic

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2 media to street furniture but not to impose the
3 Zoning Resolution's restrictions on backlighting
4 on the street furniture?

5 A No.

6 Q I have a question that I think I
7 know the answer to, and if I'm right, it will save
8 us some time.

9 Do you know what Blue Tooth
10 technology is?

11 A Yes.

12 Q Are you aware of the existence or
13 extent of Cemusa's use of Blue Tooth technology in
14 connection with its street furniture advertising?

15 A No.

16 Q Let me ask you a couple of brief
17 questions nonetheless.

18 Mr. Fortier, do you believe it
19 should be permissible for my client to use Blue
20 Tooth transmitters to beam advertisements to
21 passing pedestrians in the vicinity of its
22 advertising signs?

23 A I have never considered that, as
24 there is no -- if there was no visual
25 representation in place, no structure in place,

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2 you're aware of, looked into this question?

3 MS. NEUFELD: Objection.

4 A As it relates to particularly signs
5 on subway stairs, no, I'm not aware.

6 Q Is there any other way in which you
7 think this might have been looked into?

8 A We have more recently with the Law
9 Department in conjunction with counsel --

10 MS. NEUFELD: Are you aware of
11 privilege when you're answering the
12 question?

13 THE WITNESS: Yeah.

14 A We have considered the issue of MTA
15 signage as it relates to arterial signs.

16 Q To your knowledge, nobody at the
17 City has considered the issue relating to the
18 MTA's urban panels?

19 A No.

20 MR. HECKER: Let's mark it as 19.

21 (The above described document was
22 marked Plaintiff's Exhibit 19 for
23 identification, as of this date.)

24 A Mr. Fortier, Exhibit 19 is a
25 two-page document that's not Bates stamped. At

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2 office for the Department of Buildings.

3 Q To your knowledge, has anybody at
4 the City ever conducted or engaged anybody to
5 conduct a study of the best practices in the area
6 of sign regulation in other jurisdictions?

7 A Not that I'm aware of.

8 Q To your knowledge, has the City ever
9 considered adopting a single set of rules that
10 would apply equally to signage on private property
11 as well as signage on the streets and sidewalks?

12 A No.

13 Q Have you ever heard of someone named
14 Douglas Woodward?

15 A Yes.

16 Q Who is Douglas Woodward?

17 A I worked with Douglas at the
18 Department of City Planning. I'm not certain as
19 to his title at that time, but he was involved as
20 a Planning -- sort of capacity with the
21 department.

22 Q Approximately, just to give me a
23 very general idea, when was the last time you
24 talked to him, recently or years ago?

25 A About a year, year and a half ago.

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2 A I would say that -- yes, if the --
3 if the base of the sign is within the zoning lot,
4 yes. Their projection, whether it's a few inches
5 or a few feet, would fall under the jurisdiction
6 of the Department of Buildings.

7 Q Even if the advertising sign itself
8 is all the way by the curb line, the jurisdiction
9 would be with DOB and not DOT, right?

10 A I have not encountered that
11 situation, but it sounds correct to me, that we
12 would. I would have to verify with counsel of DOT
13 as to jurisdiction. I've not seen a case like
14 that.

15 Projections are not allowed to that
16 extent. There may be conforming situations where
17 it may have occurred, but I would need to confirm.

18 Q If the City did conclude that it was
19 appropriate to subject street furniture
20 advertising to the restrictions of the Zoning
21 Resolution, and if the City further concluded to
22 vest DOB as opposed to DOT with enforcement
23 authority over such street furniture advertising,
24 there isn't any reason why that wouldn't make
25 sense, is there?

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2 MS. NEUFELD: Objection.

3 A I think we have the ability to
4 evaluate the signage as to complying with the
5 Zoning Resolution. I don't see why we wouldn't,
6 aside from the very broad issue of our
7 jurisdiction of the sidewalks generally. That's
8 the major hurdle, but I think we have the ability
9 to evaluate whether or not existing signage meets
10 regulations, complies with regulations.

11 Q To your knowledge, there aren't any
12 specifically dedicated sign enforcement staff at
13 DOT, are there?

14 A I really have no idea.

15 MR. HECKER: I think I'm done.

16 Well, one more series of questions
17 and we'll call it a day.

18 Q I want to turn back to indirectly
19 illuminated advertisements in manufacturing
20 districts.

21 Subject to certain limitations,
22 signs with indirect illumination that bear
23 advertising in manufacturing districts can be
24 permissible?

25 A Yes.

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2 those light rays must have reflected from the wall
3 to the viewer's eye, right?

4 A Yes.

5 Q Any time that there is a sign with
6 indirect illumination that's visible by a human
7 being from a street, by definition, light rays
8 must have reflected off of the sign onto the
9 street, right?

10 A Yes.

11 Q And the City's concern is with
12 direct light rays, as opposed to indirect light
13 rays?

14 A Yes.

15 Q And the City hasn't made any effort
16 to control the degree to which light rays come to
17 the street, indirectly?

18 A The limitation within the Zoning
19 speaks to no direct rays coming to the street or
20 residences.

21 When you say we made no efforts to
22 control, I'm not sure I understand the question.
23 Are you asking --

24 Q Under the City's scheme, it is worse
25 to have an internally illuminated panel sign that

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2 is illuminated by a single 400 watt bulb than it
3 is to have an indirectly illuminated sign that is
4 lit with many, many bulbs that far exceed that
5 wattage and that in combination result in more
6 light reaching the street, albeit indirectly?

7 A I couldn't speak to the amount of
8 light that actually reaches the street.

9 Q And you couldn't speak to it because
10 it's not controlled by the City's regulations.

11 There are no limits imposed thereon?

12 A We have no illumination limits
13 within Zoning.

14 MR. HECKER: Thank you, that's it.

15 EXAMINATION BY MS. NEUFELD:

16
17 Q Mr. Fortier, picking up the area we
18 were just talking about, illuminated signs.

19 I believe there's a discussion
20 earlier where Mr. Hecker was asking you some
21 questions about his client signs and whether they
22 were directly illuminated.

23 Do you remember that discussion?

24 A Yes.

25 Q I believe that you testified that as

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2 light are emanated to the viewer and the light is
3 only projected onto the painting?

4 A Yes.

5 Q Let's refer to that type of lighting
6 as art museum lighting, for the sake of shorthand,
7 okay?

8 A Yes.

9 Q If I'm understanding your testimony,
10 consistent with clarifications made in response to
11 Ms. Neufeld's followup, what you're saying is that
12 if my clients took the light bulbs in their panel
13 signs from behind the posters and placed them in
14 what I'm calling for shorthand, art museum light
15 fixtures, then they would be indirectly
16 illuminated?

17 A Yes.

18 Q As long as the light rays only reach
19 the street indirectly by way of reflecting off of
20 the sign and not directly to the street?

21 A Yes.

22 Q And I will represent to you that my
23 client's panel signs contain fluorescent bulbs
24 that project 6,350 luminance, okay?

25 A Yes.

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2 Q Your testimony is that my client
3 could remove those bulbs and install what we're
4 loosely calling art museum style light fixtures on
5 their signs and project light onto their signs,
6 such that a light meter on the street would
7 register 6,350 luminance, correct?

8 A Yes.

9 Q In fact, my client could install
10 these so-called art museum style light fixtures on
11 their panel signs and project so much light onto
12 their signs that a light meter on the street would
13 register a million luminance, because there is no
14 limit under the Zoning Resolution to how much
15 illumination can reach the street as a result of
16 indirectly illuminated advertising signs?

17 MS. NEUFELD: Objection.

18 A We have no limitations right now as
19 to the amount of illumination.

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22 (Continued on following page.)
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2 Q So, in my question, a million
3 luminance would be okay, as long as my client's
4 signs otherwise complied with the other
5 restrictions of the Zoning Resolution?

6 A Yes.

7 MR. HECKER: I don't have anything
8 else.

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15 Subscribed and sworn before me
16 this _____ day of _____, 2008.

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19 NOTARY PUBLIC